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1 Q Right. But in terms of seeing it, are you saying that  
2 it's just not done for the subcontractor to see the prime  
3 contract?

4 A Yes, I don't get the con -- ever see the contract from the  
5 general contractor to the owner.

6 Q Okay. Whether you've seen it or not, did you become aware  
7 by any means that the prime contract between Kanag'iq and  
8 the government is a unit price contract?

9 A That's how it was established.

10 (Exhibit A Proffered)

11 Q I'm going to hand you what's been marked as Exhibit A to  
12 yet another Johnson's deposition, the one yesterday which  
13 you attended, and ask you to take a look at that. And  
14 after you've looked at it, I'd like you to identify it.

15 A It appears to be our subcontract.

16 Q Your subcontract with Kanag'iq?

17 A That's correct.

18 Q And on page 2, is that your signature?

19 A Yes.

20 Q Okay. And it looks as though you executed it on October  
21 26th, 2000. Does that sound right?

22 A That's what it says, yes.

23 Q Okay. Looking at the first page, you see about halfway  
24 down, there are two paragraphs that have parentheticals in  
25 front of them, A and B?

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1 A Yes.

2 Q I'd like you to read subparagraph B out loud, please.

3 A Unit prices as set forth below which on the basis of  
4 estimated quantities will involve a gross contract price  
5 of approximately, per attached fax, quotation, of zero  
6 dollars. Subcontractor will be paid by line items.

7 Q Okay. And that's one the terms of your contract with  
8 Kanag'iq, correct?

9 A For the first year, yes.

10 Q We'll get to that in a minute. Setting aside the time  
11 frame for the moment, that is the language for a unit  
12 price contract, correct?

13 A Yes.

14 Q So you concede that for the first year at least, it was a  
15 unit price contract with Kanag'iq, correct?

16 A That's not how it was handled, even for the first year.

17 Q So in other words, you don't concede that?

18 A No.

19 Q Looking a little further down the first page, I'd like you  
20 to read paragraph two out loud.

21 A To be bound by all laws, government regulations and orders  
22 and all provisions of the main contract, which provisions  
23 are incorporated by reference and to be bound by  
24 provisions attached here unto -- or hereto.

25 Q Okay. And this isn't the first contract you ever signed,

1 2001?

2 A The same way I had been prior. They asked for prices, I  
3 gave them prices, they said go to work.

4 Q Who asked for prices?

5 A Most of the time it was Bill Jury.

6 Q I'm going to ask you a hypothetical question, so bear with  
7 me. And you need to realize you are going to make certain  
8 assumptions but only for purposes of this question.  
9 You're not conceding the point for purposes of litigation.  
10 A hypothetical question. Assume that the court in this  
11 case, hypothetically, disagrees with your view on the  
12 contract term.

13 MS. TUGMAN: I object to the form of the question.

14 MR. GINGRAS: Well, go ahead.....

15 MS. TUGMAN: He's not an.....

16 MR. GINGRAS: Let me finish the question.

17 MS. TUGMAN: .....expert witness. A hypothetical question  
18 is inappropriate.

19 MR. GINGRAS: Let me finish the question before you  
20 object.

21 Q Assume that the court in this case concludes that you're  
22 mistaken about the contract term. That because the prime  
23 contract was incorporated by reference, the option years  
24 are also incorporated by reference. Assume that the court  
25 disagrees with your views on whether or not a unit price

1 considering unit pricing contracts in the abstract, it's  
2 true that engineering would not be included in the unit  
3 price but would be built -- an awkward question, forget  
4 it. In a unit price contract, if there's engineering  
5 costs, those would ordinarily be embedded in the line item  
6 number for the component being installed, correct?

7 A No. There was a line item for surveying of fire alarm,  
8 and there was a line item for sprinkler number on the top,  
9 and that was for the design.

10 Q Okay. So generally speaking, unless there's a line item  
11 in a unit price contract, the activity does not get paid  
12 for, correct?

13 A Generally speaking, if there's not a line item that is  
14 being done then it should be addressed, which it had been,  
15 and it should be either incorporated into the estimate  
16 sheet as a new line item or as we had been informed to do,  
17 add it in another area.

18 Q When you say add it in another area, what does that mean?

19 A Fill.

20 Q I'm sorry, what?

21 A We -- we were informed to use additional items to cover  
22 costs that were not covered by the contract.

23 Q Explain to me how that would work.

24 A Well, in the instance you brought up yesterday, exit  
25 signs, that GMW charged \$80,000 for removal and work on

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1 exit signs throughout this project. That was one item GMW  
2 had been informed to use to cover costs that were not line  
3 items.

4 Q Okay. And who do you claim told you that?

5 A One person was Steve Frere and I believe we had other  
6 conversations with Phil, possibly Bill, I don't remember  
7 if Bill was part of this.

8 Q Okay. And when you say Phil, are you referring to Phil  
9 Young?

10 A That's correct.

11 Q I'm interested in the relationship between time and  
12 materials. In the real world, I mean, you engineering  
13 materials are 30 to 40 percent of the job, right?

14 A No. I just sent out one today asking for a breakdown, it  
15 was 50/50.

16 Q Okay. Fifty percent between engineering materials and 50  
17 percent the labor?

18 A Fifty percent materials, 50 percent labor and engineering  
19 is how it worked out.

20 Q Okay. Is 50/50 a fairly typical ratio?

21 A There is no typical.

22 Q Have you ever said that in the real world your engineering  
23 materials are 38 to 40 percent of the job?

24 A I possibly could have.

25 MR. GINGRAS: Okay. Let's go ahead and mark this as

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1 were no longer under contract?

2 A No.

3 Q Do you know what the total amount is that has been paid to  
4 GMW by Kanag'iq?

5 A In generalities.

6 Q Okay. In generalities, what is it?

7 A A little over one and a half million dollars.

8 Q Do you know what the total of GMW's invoices to Kanag'iq  
9 is?

10 A A little over two million.

11 Q Who at GMW would prepare invoices to be sent to Kanag'iq?

12 A Gretchen Grau (ph) with the information I have given her.

13 Q Okay. So you'd give her the numbers and she'd type them  
14 up?

15 A I will have given her the contract amount in the beginning  
16 of the project and what percentages were what and how far  
17 we were done with each items, such as engineering  
18 materials and installation.

19 Q And we'll look at some invoices in a minute but first some  
20 general questions about format. Were your invoices to  
21 Kanag'iq itemized?

22 A No.

23 Q If someone at Kanag'iq wanted to check your invoice  
24 amounts against the schedule of prices, the unit prices in  
25 Exhibit A, who would they be able to do that?



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1 A That wasn't how the projects was run.

2 Q Well primarily, that's not how the project was billed by  
3 GMW, is it?

4 A That's not how the wha -- project was run.

5 Q Getting back to my question, I understand your contention  
6 that that's not how the project was run. It will be  
7 difficult to track GMW invoices against the price schedule  
8 that's part of Exhibit A, correct?

9 A The price schedule had nothing to do with the invoices.  
10 REPORTER: You need to trade mics.

11 Q Should the invoices.....

12 REPORTER: It's okay.

13 Q You're saying the invoices had nothing to do with the unit  
14 price schedule that was part of Exhibit A?

15 A Part of -- Exhibit A was the original pretend job we bid  
16 to Kanag'iq for them to decide which contractor they were  
17 going to use.

18 Q Uh-huh. (Affirmative)

19 A Simplex Grinnell I believe was one that provided the same  
20 thing. I never was privy to what their numbers were or  
21 anything like that.

22 Q Okay. And by way of the background, Kanag'iq was the  
23 general contractor for this project, right?

24 A That's correct.

25 Q Okay. And GMW became Kanag'iq's subcontractor for fire

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1 alarm.....

2 A Yes.

3 Q .....and sprinkler systems?

4 A Yes.

5 Q Did you say the pretend job?

6 A Yes. We were given line items, quantities, and asked to  
7 provide what we could do those line items for and they  
8 were compared with two or three other companies' prices.

9 Q Okay. And you've said that those are the line item prices  
10 that you used in doing your estimates for Kanag'iq,  
11 correct?

12 A The price that I provided to Kanag'iq in that format.

13 Q And since you're using those prices from the schedule  
14 that's part of Exhibit A, why did your invoices not  
15 reflect the kind of units that were being billed in each  
16 particular invoice?

17 A Because they were used as a tool to come to a bottom line  
18 price only.

19 Q Assume for purposes of this question that Kanag'iq was  
20 trusting GMW to bill it fairly. Was that a fair  
21 assumption for Kanag'iq to make?

22 MS. TUGMAN: Objection. Argumentative.

23 A I can't assume what Kanag'iq thought or didn't think.

24 Q In any event, GMW should have billed Kanag'iq fairly,  
25 correct?



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1 A GMW did bill correctly and fairly as per the prices we  
2 provided to Kanag'iq before we started the projects.

3 Q Before this project, had you ever worked with a unit price  
4 contract before?

5 A No.

6 Q Did you ever ask anybody what a unit price contract was?

7 A No.

8 Q When you pay your workers on the project, does that result  
9 in a certified payroll document being generated?

10 A Individuals that are onsite are turned in on certified  
11 payroll, that is correct.

12 Q Okay. And other than individuals who are onsite who are  
13 reflected on certified payroll, is anyone else paid in  
14 connection with work on the project?

15 A Certainly.

16 Q Okay. Like who?

17 A Engineers -- or designers, I should say. Shop personnel.  
18 Office personnel. Superintendents.

19 Q And those individuals are not reflected in the certified  
20 payrolls?

21 A Absolutely not.

22 Q The people who are onsite are the ones that do the  
23 installation work, correct?

24 A That's correct.

25 Q And all of the installation work, all that labor is

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1 reflected in the certified payrolls, correct?

2 A Correct.

3 Q Did you ever tell anyone at Kanag'iq that you considered  
4 the prices schedule that was part of Exhibit A to be for a  
5 pretend job?

6 A Kanag'iq provided that so they could compare my prices  
7 with Grinnell Fire Protection and one or two other  
8 companies. It was so they would know apples to apples  
9 versus -- that's what it was for.

10 Q When did this dispute over billing first come up?

11 A In the best of my recollection, we were probably  
12 two-thirds of the way through the project of 2004 when I  
13 noticed that we weren't getting paid what we were billing.

14 Q And did you bring it to someone's attention at Kanag'iq?

15 A Yes, I did.

16 Q Okay. And who did you speak to first?

17 A Phil Young first.

18 Q And what did you say to him and what did he say to you?

19 A I explained to Phil that I had noticed that there were  
20 reduced prices on Kanag'iq's paperwork saying Kanag'iq's  
21 threshold and I didn't understand what that was about.  
22 And that they couldn't just arbitrarily start reducing my  
23 pay.

24 Q And what did he say?

25 A Well, you need to talk to Bill.

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1 Q Well, what do you remember him saying? Or I misunderstand  
2 you -- I must have missed something. I was looking at a  
3 document. Who were you talking to in this convers.....

4 A Phil Young.

5 Q Okay. And what did Phil Young say to you?

6 A That I needed to talk to Bill about that.

7 Q Okay. And did you talk to Bill about it?

8 A I tried to. Bill was out of town.

9 Q Okay. So did you try more than once?

10 A Yes, there was -- I believe some faxes went back and  
11 forth, or at least from me.

12 Q Okay. But I'm asking about conversations. Did you ever  
13 have a conversation with Bill Jury about the billing  
14 dispute?

15 A I believe one.

16 Q Okay. And about what time frame did that happen?

17 A Somewhere, like I said, when we were two-thirds or more  
18 done with the projects.

19 Q But in -- was this in person or on the phone?

20 A I don't remember.

21 Q How long did the conversation last?

22 A I don't remember that either.

23 Q What did you say to him and what did he say to you?

24 A I said that I didn't understand him changing numbers or  
25 what his threshold was. He said that he believed two of

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1 my invoicing was out of line and that he had gotten -- or  
2 two of my prices was out of line and that he had gotten a  
3 price for some other work and he wanted me to rework them,  
4 the prices.

5 Q And what was your response, if any?

6 A I told him I would look at that. I did want to get paid  
7 and I did look at the two projects and I did reduce the  
8 prices for him.

9 Q Which two projects are you talking about?

10 A The snow barn and the Susitna Club.

11 Q And with respect to those two projects, how much did you  
12 reduce the price?

13 A Well, the snow barn I believe was substantial. I'm not  
14 sure exactly. It was over \$50,000, I believe, lowered.

15 Q Okay. How about the Susitna Club?

16 A Somewhere in the same range. I'm not sure.

17 Q So a total reduction of approximately \$100,000?

18 A Somewhere in that range, that's correct.

19 Q Is that reduction reflected in the amount you're claiming  
20 in the lawsuit?

21 A Yes.

22 Q So you adjusted your billing amount. Then what happened  
23 next?

24 A We continued to work on the projects and we were informed  
25 we were going to receive monies and it was going to be

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1 rectified and that didn't happen.

2 Q Did you ever talk to Bill Jury after that one  
3 conversation?

4 A I don't recall.

5 Q Other than Bill Jury and Phil Young, did you talk to  
6 anyone else about the billing dispute at Kanag'iq?

7 A At Kanag'iq? I don't recall talking to anyone besides --  
8 oh, Ray Hamilton in 2005.

9 Q Okay. And tell me when in 2005 that conversation  
10 happened?

11 A I believe it was in February. I don't recall the exact  
12 dates.

13 Q Was it in person or on the phone?

14 A Both.

15 Q More than one conversation?

16 A Yes.

17 Q Okay. How many conversations did you have?

18 A We had some email go back and forth and he came over to my  
19 office.

20 Q Okay. During the course of those conversations, as best  
21 you recall, what did you say to him and what did he say to  
22 you?

23 A I said that I expected to be paid and he said he expected  
24 -- well actually, he said that Bill was requiring me to  
25 recount all the items on all the projects.

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1           such as that.

2    Q       Okay.

3    A       And I explained to him that those items were for items  
4           that there were no line items for, such as lighting,  
5           heating, and controls, demo and such.

6    Q       Uh-huh. (Affirmative)

7    A       And he wanted that reflected and recounted.

8    Q       Okay. Did you say anything else to him?

9    A       I may have. I couldn't recall.

10   Q       Okay. How about the second conversation? Was that also a  
11           meeting in person?

12   A       Yes.

13   Q       And was that the one where Ray came to your office?

14   A       He came to my office, that's correct.

15   Q       Okay. And was that the one where, according to you, he  
16           suggested that Kanag'iq would pay some additional money?  
17           Or was that the first meeting?

18   A       I don't remember which meeting. I think it was the first,  
19           but I don't know.

20   Q       Okay. At the second meeting, what did you say to him and  
21           what did he say to you?

22   A       He said he was -- had expected my -- me to recount and I  
23           said, well, I know you expected that but I hadn't said I  
24           was going to do that. I didn't feel like that was my job.  
25           And he told me that if I didn't recount it, I wouldn't get



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1 paid.

2 Q Let's pause there for a moment. Would you agree that  
3 Kanag'iq should only have to pay for stuff that was  
4 actually installed?

5 A No.

6 Q They should have to pay for items that were not installed?

7 A They should have to pay for the agreed amount that I  
8 provided.

9 Q Here's what I'm asking, suppose that the schedule for a  
10 particular building says the estimate is 5,000 widgets.

11 A Uh-huh. (Affirmative)

12 Q Okay. And in fact GMW only installed 4,000 widgets.

13 A Uh-huh. (Affirmative)

14 Q Should Kanag'iq have to pay for 5,000 widgets?

15 A There are items that were not line items that were used,  
16 those things were used as fillers to cover those costs.  
17 So your hypothetical request for me answer, I cannot  
18 answer that the way you'd like me to.

19 Q In the abstract then, not talking about this project,  
20 would you agree as a general principle that in a unit  
21 price contract, the general contractor should only have to  
22 pay for items that are actually installed?

23 A This contract was never handled as.....

24 Q I'm not talking about this contract. In the abstract, in  
25 a unit price contract situation.....

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1 MS. TUGMAN: Objection. Calls for speculation. Assumes  
2 facts not in evidence.

3 MR. GINGRAS: Please, Sarah, let me finish my objection  
4 before you make it.

5 Q In a unit price contract situation, in the abstract, would  
6 you agree with the principle that the general contractor  
7 should not have to pay for items that are not installed?

8 A If that contract is handled all the way through the  
9 project per only line items, yes.

10 Q So your contention is that somehow this unit price  
11 contract is different and that it was run differently?

12 A It was always run differently from day one.

13 Q What I'm going to do is hand you a stack of invoices and  
14 ask you to take a look at them. I tried to hit all of  
15 them as possible but I missed one or two because there are  
16 a number of them but I'll -- going to be asking you some  
17 different questions about them.

18 A Yes.

19 Q First, you know like I say, take a quick look to make sure  
20 that you recognize them.

21 MR. GINGRAS: And I don't have a duplicate set of those,  
22 Sarah, you're welcome to look over his shoulder or whatever  
23 you'd like to do.

24 (Pause)

25 A Okay.

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1 then that's where the 20 percent or 15 or 50 percent would  
2 come in. That's how the billing would be done.

3 Q To the extent that those invoices reflect items actually  
4 installed in the project, the prices for those items  
5 should be the same price contained in the schedule that's  
6 part of Exhibit A, correct?

7 A The price here is reflective only of the bottom line  
8 number that was given to Kanag'iq through the tool of the  
9 estimate sheet.

10 Q But the bottom line number that you're talking about.....

11 A Uh-huh. (Affirmative)

12 Q .....necessarily includes some components that are being  
13 installed, correct?

14 A Certainly.

15 Q Okay. And my question is, to the extent that the invoice  
16 reflects components that have been installed, the prices  
17 for those components should be the prices from the  
18 schedule in Exhibit A, correct?

19 A Please repeat that.

20 Q Sure. To the extent that the invoice reflects the  
21 installation of components, the price for those components  
22 should be the price reflected in schedule A -- in the  
23 schedule to Exhibit A?

24 A This doesn't reflect items on that, other than the lower  
25 bottom price. I'm -- I'm missing.....

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1 Q Yeah.....

2 A .....what you're trying to get.....

3 Q .....you're not understanding my question.

4 A No.

5 Q I realize that there are line items that do not appear on  
6 the invoice. What I'm asking is that to the extent that  
7 the price of components is built into the general invoice  
8 amount, the prices for those components should be prices  
9 taken from the schedule that's part of Exhibit A?

10 MS. TUGMAN: He's answered it three times and he's said  
11 no.

12 MR. GINGRAS: That's a different question. You  
13 misund.....

14 MS. TUGMAN: No, I don't.....

15 A I'm not understanding. This is reflective only on the  
16 bottom line price. It had nothing to do with quantities  
17 of anything.

18 Q So your position is that you could invoice Kanag'iq for  
19 whatever lump sum amount you felt was appropriate based on  
20 your estimate without regard to the unit price schedule  
21 that was part of Exhibit A?

22 A The way this project was handled throughout, Kanag'iq  
23 asked for a price, GMW provided a price from year one to  
24 year -- the final year, we were paid on that price we  
25 provided, we installed off of that price, and we were

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1 completely paid off of that. There was not recounts.

2 There was nothing. It was bottom line project every time.

3 (Exhibit 12 Proffered)

4 Q Let's see, did I give you Exhibit 12?

5 A Yes.

6 Q Okay. And again, like I said -- never mind that. It's  
7 the same thing, no line item reflected, right?

8 A That's correct.

9 (Exhibit 21 Proffered)

10 Q Okay. How about let's flip to Exhibit 21. Do you have  
11 Exhibit 21 in front of you?

12 A Yes.

13 Q You see that there's a reference to 100 percent  
14 engineering and 25 percent installation?

15 A Yes.

16 Q And the amount being billed is \$140,000?

17 A Yes.

18 Q Explain to me the breakdown between 100 percent  
19 engineering and 25 percent installation. What does that  
20 mean?

21 A It means we had completed the engineering and we had done  
22 25 percent of the installation of the work.

23 Q Okay. Is it your intention through this invoice to bill  
24 Kanag'iq for engineering work?

25 A No, it's to -- the engineering -- yes, of course, I'm

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1 that's how I would come up with that.

2 Q When you send an invoice like this, Exhibit 24 I think  
3 we're on, is that correct? I got it.....

4 A That's the one we're one.

5 Q Yeah. When you send an invoice like Exhibit 24 and it  
6 refers to the contract amount, did you send a cover letter  
7 to the billing person at Kanag'iq saying that when you  
8 were talking about contract, you don't mean the  
9 subcontract?

10 A Each one of these were individual contracts, work orders.

11 Q But the answer to my question is, no, you didn't send a  
12 cover letter saying that when I use the word contract.....

13 A No.

14 Q .....I don't mean the subcontract?

15 A No.

16 Q Okay. Before this project, did you know Steve Frere?

17 A No.

18 Q During the course of this project, did you become  
19 acquainted with Steve Frere?

20 A A little bit.

21 Q When you say a little bit, what does that mean?

22 A I didn't have a lot of dealings with Steve myself. Thomas  
23 did. Clayton did. But day to day, I didn't have much to  
24 do with Steve.

25 Q You heard Thomas Johnson yesterday testify that according



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1 A Because I don't know him.

2 Q After this billing dispute arose, the one with Kanag'iq,  
3 did you ever talk to anyone with the government about  
4 Kanag'iq in terms of their non-payment?

5 A Yes.

6 Q Who with the government did you speak with?

7 A Sergeant Brown. Lucy. Steve Frere.

8 Q Okay. And during the course of those conversations, what  
9 did you say to them about Kanag'iq?

10 A That I had not been receiving payments due me.

11 Q Anything else?

12 A That's the gist of it. There might have been a few other  
13 things but that was the gist of the argument.

14 Q Did you make any comments about Kanag'iq that could be  
15 interpreted as negative comments?

16 A Don't recall.

17 Q Did you make any comments trying to dissuade the  
18 government from giving Kanag'iq additional work?

19 A No.

20 Q With respect to the current project involving Steve Frere  
21 and the government, is GMW the general contractor or the  
22 sub?

23 A The subcontractor.

24 Q Who is the general?

25 A Windsor Construction.

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1 MR. GINGRAS: Let me go off record for a minute, Wanda.

2 REPORTER: Off record.

3 (Off record)

4 (On record)

5 REPORTER: We're back on record.

6 Q On the base warehouses, do you recall whether or not there  
7 were more than eight groove flanges installed?

8 A I do not recall.

9 Q And if I understand your position correctly, and I want to  
10 make sure I do, what you're saying is it doesn't matter if  
11 the quantities changes according to your view because of  
12 the way you believe the contract was working?

13 A Yes.

14 Q So you don't care whether the quantities installed match  
15 the estimate that you gave Kanag'iq or not?

16 A Most cases I tried to be as close as possible.

17 Q Why would you do that?

18 A Because I tried to be fair.

19 Q When you were working on some of these buildings, did you  
20 change the unit pricing?

21 A There was the corruption I discussed with your earlier  
22 that Ray Hamilton brought to my attention.

23 Q Okay. On some.....

24 A That was not intentional.

25 Q Okay. On some of the buildings, did the unit pricing

1 change from your end a number of times?

2 A No. Not a number of times. The bottom price did.

3 Q And how would those changes come about?

4 A The 381st, there was a change because conduit was supposed  
5 to be used in the beginning, our price was over the  
6 budget, they needed to reduce it, so they allowed us to  
7 use cabling instead, which reduced the price. Same thing  
8 with Susitna Club. There were things such as that that  
9 made prices change.

10 Q One general principle I'd like to establish. Even under  
11 your view of the contract -- with which we disagree, by  
12 the way -- but even under your view of the contract, GMW  
13 should not bill Kanag'iq for the same item twice, correct?

14 A I'm.....

15 Q For example, if you have a situation where there are alarm  
16 bells used in the system and GMW bills Kanag'iq for the  
17 alarm bills used say in the fire prevention system, it  
18 shouldn't bill Kanag'iq again for the same fire alarm bell  
19 in the sprinkler system, should it?

20 A The sprinkler system bell would have been provided but not  
21 installed by the sprinkler side of it. The sprinkler bell  
22 would have been installed by the fire alarm side, which  
23 would have the labor in part -- in its part of the  
24 estimate. So that is -- it appears that it's double  
25 billed but it's not.